

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1209 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PATEL MANSUKHLAL RAJABHAI HIRPARA OF DHORAJI

Versus

PATEL BACHU SAVDAS

Appearance:

MR.MS SHAH on behalf of MR.SURESH M SHAH for the Petitioner
MR.DM THAKKAR on behalf of MR.PM THAKKAR for
Respondent Nos. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 16/02/2001

ORAL JUDGEMENT

1. This is landlord's revision under sec.29(2) of

the Bombay Rent Act. Shri MS Shah for the revisionist and Shri DM Thakkar for the respondent have been heard.

2. The contention of Shri MS Shah appearing on behalf of the landlord is that, a suit for eviction of the tenant, respondent from the tenanted shop and back portion called as 'osari' was filed. The allegation was that the shop was let out to the respondent, and thereafter, the respondent had illegally trespassed over the back portion called as 'osari'. Eviction was, therefore, sought from the two portions.

3. The suit was resisted by the tenant.

4. The trial Court, after considering the evidence on record, passed decree for eviction in respect of both the portions, namely, the shop as well as the 'osari'.

5. Feeling aggrieved, the tenant preferred an appeal. The appeal was allowed on technical objection that the rent Court could not have passed decree for possession in respect of open 'osari', and that the Civil Court alone could have granted decree for possession in respect of 'osari'. With this finding, the appeal was allowed and the matter was remanded to the trial Court for fresh consideration of this aspect of the matter.

6. In this revision, Shri MS Shah, learned counsel for the revisionist, landlord has stated that, he is giving up claim for eviction in respect of 'osari' and that he confines his claim for eviction only in respect of the tenanted shop. However, this has to be done by moving appropriate amendment application seeking amendment in the plaint not only in the relief clause but also in the body of the plaint containing allegation regarding trespass over the 'osari'. This exercise can be done before the lower appellate Court. The lower appellate Court has not examined the validity of decree for possession in respect of the shop, which is tenanted accommodation. As such, there is no option, but to allow the revision and set aside the judgment and decree of the appellate Court and remand the appeal to the appellate Court with direction that it shall permit the landlord, revisionist to move an amendment application seeking suitable amendment in the plaint, which shall be heard and decided by the lower appellate Court after giving an opportunity to the tenant, respondent for filing objections, etc. Thereafter, the appeal shall be heard and decided af

appellate Court. No order as to cost in this revision.

The statement given by Shri Shah in this revision shall be considered by the lower appellate Court in so far as it relates to giving up claim for eviction of 'osari' in the rent suit. The matter has become sufficiently old. The revision is pending in this Court since 1984. As such, the lower appellate Court is directed to decide the appeal within a period of six months from today.

February 16, 2001. [D.C. Srivastava, J.]

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